

OAH No. 12-2500-17037-2, MPUC Dkt No. CN-05-619
and OAH No. 12-2500-17038-2, MPUC Dkt No. TR-05-1275

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Otter
Tail Power Company and Others for
Certification of Transmission Facilities in
Western Minnesota

and

SECOND PREHEARING ORDER

In the Matter of the Application to the
Minnesota Public Utilities Commission for
a Route Permit for the Big Stone
Transmission Project in Western
Minnesota

A prehearing conference was held February 8, 2006, in the Commission's large hearing room before Administrative Law Judges Steve M. Mihalchick and Barbara L. Neilson. The following persons noted their appearance:

Todd J. Guerrero and David L. Sasseville, Lindquist & Vennum, 4200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402, appeared for and on behalf of the Applicants.

Julia E. Anderson and Karen Finstad Hammel, Assistant Attorneys General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared for and on behalf of the Department of Commerce (Department).

Elizabeth I. Goodpaster, Attorney at Law, Minnesota Center for Environmental Advocacy, 26 East Exchange Street, Suite 206, St. Paul, Minnesota 55101, appeared for and on behalf of Minnesota Center for Environmental Advocacy; Minnesotans for an Energy Efficient Economy; Izaak Walton League of America, Midwest Office; Wind on the Wires; and Union of Concerned Scientists.

Thomas L. Osteraas, General Counsel, Excelsior Energy, Inc., 11100 Wayzata Boulevard, Suite 305, Minnetonka, Minnesota 55305, appeared for and on behalf of Excelsior Energy, Inc.

Bruce Gerhardson, Associate General Counsel, Otter Tail Corporation, 215 S. Cascade Street, P.O. Box 496, Fergus Falls, Minnesota 56538, appeared for and on behalf of Otter Tail Corporation.

Dean Pawlowski, Project Manager, 218 S. Cascade Street, Fergus Falls, Minnesota 56537, appeared for and on behalf of the Big Stone Transmission Project.

Carol Overland, Attorney at Law, Overland Law Office, 402 Washington Street, Northfield, Minnesota 55057, appeared for and on behalf of herself as an individual.

David Jacobson, and Bob Cupit, appeared on behalf of the PUC Staff.

Based on the discussions during the prehearing conference, and upon all of the files, the Administrative Law Judges make the following:

ORDER

Consolidation

1. These matters are consolidated for hearing. The informational meetings and public sessions will be conducted jointly. The Certification Matter and the Route Permit Matter may be heard sequentially during the evidentiary hearing.

Parties and Intervention

2. The parties to the Certification Matter named in the Commission's Notice and Order for Hearing are the Applicants and the Department. At the prehearing conference, Petitions and verbal requests to intervene as parties were granted to the Minnesota Center for Environmental Advocacy; Minnesotans for an Energy Efficient Economy; Izaak Walton League of America, Midwest Office; Wind on the Wires; Union of Concerned Scientists; and Excelsior Energy, Inc. A Petition to Intervene as a party filed by Carol Overland was denied.

3. The only parties to the Route Permit Matter named in the Commission's Notice and Order for Hearing were the Applicants. At the prehearing conference, a verbal request to intervene made by the Department was granted.

4. The final date for filing a Petition to Intervene as a party in either matter is March 15, 2006. Any person petitioning to intervene after that date may be restricted as to the scope of their participation. Any existing party that wishes to object must file an objection within seven days of service of the petition, in accordance with Minn. R. 1400.6200, subp. 2.

5. Any person who desires to be on the service list as a non-party participant must file a request with the Administrative Law Judge.

6. Any person may request access to Applicants' web site that contains a database of public documents related to these matters by e-mailing a request to David L. Sasseville at dsasseville@lindquist.com.

SCHEDULE

7. The following schedule is adopted:

Date	Event
March 1, 2006	EIS Scoping Decision
March 15, 2006	Deadline for intervention and requesting non-party participant status
June 1, 2006	Applicants' prefiled direct testimony
June 30, 2006	Draft EIS available
August 1, 2006	Deadline for dispositive and other significant motions
September 1, 2006	Department and Intervenor's prefiled direct testimony
September 6, 2006, at 9:30 a.m.	Status conference at PUC
September 7, 2006	Mail notice of hearing
September 11-15, 2006	Publication of notice of hearing in newspapers
October 2, 2006	Prefiled rebuttal testimony by all parties to Department and Intervenor's direct testimony (no new issues)

October 9, 2006, Benson October 10, 2006, Morris October 11, 2006, Ortonville October 12, 2006, Canby October 13, 2006, Granite Falls	Informational meetings and public sessions starting at 1:00 p.m. and 6:00 p.m.
October 16, 2006, St. Paul	Informational meeting and public session starting at 6:00 p.m. at the PUC
October 16-27, 2006, 9:00 a.m.	Evidentiary hearing at the PUC
November 17, 2006	Briefs and Proposed Findings
December 1, 2006	Reply Briefs
December 1, 2006	Final EIS
December 11, 2006	Deadline for comments from parties and the public on changes in the Final EIS from the Draft EIS
January 5, 2007	ALJ Report and Recommendation
February 9, 2007	Final PUC Decision

PROCEDURE

8. The Administrative Procedure Act;¹ the public hearing procedures for designation of sites and routes set forth in Minn. Stat. § 116C.57 in general and Minn. Stat. § 116C.57, subd. 2d, in particular; and the Contested Case Rules of the Office of Administrative Hearings,² shall govern the conduct of the hearings in these matters. To the extent that they are not superseded by the Contested Case Rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.3200, shall also apply.

9. The OAH rules regarding Hearings on Siting of Power Lines and Electrical Generating Plants, Minn. R. 1405.0200 – 1405.2700, are preempted by Minn. Stat. § 116C.57, subd. 2d, which was enacted in 2001.³ Thus, those rules no longer apply. Parties and interested persons may file memoranda regarding this determination by April 14, 2006, and the Administrative Law Judges will reconsider it.

¹ Minn. Stat. §§ 14.57 – 14.62.

² Minn. R. 1400.5100 – 1400.8400.

³ 2001 Minn. Laws, c. 212, art. 7, § 10.

10. Under Minn. Stat. § 116C.57, subd. 2d, and Minn. R. 1400.6200, the Administrative Law Judge may, but is not required to, allow any person to ask questions of other witnesses regarding the Route Permit. In this case, the Applicants and the Department have agreed to make their witnesses available for questioning at the informational meeting and public session in St. Paul. However, that is inadequate to meet the public participation goals in Minn. Stat. § 116C.57 and may make development of a meaningful record difficult. Therefore, the Applicants and the Department shall have people available at all the informational meetings and public sessions to respond generally to questions and comments from the public. Intervenors may have people available at their option.

11. In the interest of full public participation, it is appropriate to allow the parties and the public to comment on any changes in the Final EIS from the Draft EIS. Thus, 10 days after the issuance of the Final EIS has been allowed for such comments.

FILING OF DOCUMENTS

12. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

13. All documents filed, including prefiled testimony, **but excluding information requests and responses**, shall be filed as follows:

- a. Prior to the issuance of the Report of the Administrative Law Judges, the original document shall be delivered or mailed to:

Administrative Law Judge Steve M. Mihalchick
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

- b. After the Administrative Law Judges' Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.

14. Copies of all documents shall be served on the persons listed on the attached service list, in the number indicated. An electronic copy shall also be sent by email to persons whose email address is provided on the service list. The list will be revised as necessary by the Office of Administrative Hearings. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.

15. Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is mailed by U.S. Mail or email to the Office of Administrative Hearings or delivered to the Executive Secretary of the Commission. Filings to the Administrative Law Judges shall be accomplished by email to steve.mihalchick@state.mn.us, followed by a hard copy.

16. Proof of service shall be filed with each filed document or within three business days thereafter.

17. Trade Secret and other nonpublic data shall be transmitted by US Mail or courier and not by unencrypted e-mail. If nonpublic data is filed with the Administrative Law Judge or Commission, it shall be prepared and marked in accordance with the Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data, which is available at www.puc.state.mn.us/docs/tradsecret.pdf.

DISCOVERY

18. Discovery shall be by Information Request and response. Information Requests shall normally be made by e-mail to the person from whom the information is sought and a copy shall be e-mailed to all parties. Information Requests containing references to other documents shall be sufficiently detailed to inform the other parties of the nature of the request. Information Requests and responses shall not be sent to the Administrative Law Judge. The party responding to the Information Request shall provide the information requested within ten business days after receipt of the request. There shall be a continuing obligation to update and supplement information responses. The information need not be supplied as a matter of course to other parties unless specifically requested by a party. Information Requests received after 4:00 p.m. on business days or on weekends or State holidays shall be considered to be received on the following business day, except that any U.S. Mail received during business hours shall be considered to be received on the same day.

19. In the event the information cannot be supplied within the required time, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Notice of such a motion should be made by email if possible and may be heard by telephone conference among the Administrative Law Judge and affected parties.

20. Parties asked to provide information they deem confidential or nonpublic may require the requesting party to comply with the terms of a reasonable protective agreement or the Minnesota Government Data Practices Act.

21. Further discovery may be had in accordance with Minn. R. 1400.6700 - 1400.6900 by agreement of the parties or by motion to the Administrative Law Judge.

PREFILED TESTIMONY AND ORDER OF TESTIMONY

22. Prefiled testimony shall be marked and received as exhibits. Prefiled testimony that is amended or that is not offered into the record shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all substantive revisions or corrections

to any prefiled testimony shall be served upon the Administrative Law Judge and the parties by email no later than three days before the evidentiary hearing starts.

23. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct or rebuttal evidence shall not be offered in rebuttal or surrebuttal testimony and exhibits.

24. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearings shall be: the Applicants, Intervenors in order of intervention, the Department.

EXAMINATION OF WITNESSES

25. Witnesses shall be allowed five minutes to summarize their prefiled testimony. Additional time may be allowed if necessary or a witness to respond to new issues raised by other parties, if no response was previously allowed.

26. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine witnesses through any one representative chosen by the party. Only parties may examine witnesses during the evidentiary hearing.

27. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party files and serves an objection prior to commencement of the evidentiary hearing. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

Dated: February 15, 2006

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

/s/ Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge